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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JOE MORRISON, JR., Defendant and Appellant.	E050936 (Super.Ct.No. RIF10001298) **OPINION**

APPEAL from the Superior Court of Riverside County. Sherrill A. Ellsworth and James T. Warren, Judges.* Affirmed.

Gregory Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

* Retired judge of the Riverside Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Judge Ellsworth took the plea, and Judge Warren presided over sentencing.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and Kevin Vienna, Deputy Attorney General, for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant and appellant Joe Morrison, Jr., pled guilty to one count of robbery (Pen. Code, § 211)[1] and admitted that he had suffered four prior prison terms (§ 667.5). In return, the remaining allegations were dismissed, and defendant was sentenced to the stipulated term of seven years in state prison with credit for time served. Defendant's sole contention on appeal is that the trial court abused its discretion by failing to order a probation report, thereby preventing him from establishing an adequate record. We reject this contention and affirm the judgment.

I

DISCUSSION[2]

Following defendant's guilty plea and admissions, Judge Sherrill A. Ellsworth inquired whether defendant sought immediate sentencing. The prosecutor responded in the negative so as to allow time to contact the victims. Defense counsel, on the other hand, requested immediate sentencing. Judge Ellsworth responded, "Because there is a victim on this, I will give reasonable time to allow for that. [¶] Ask probation to give us a report only as to credits for time served up to that date."

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[1] All future statutory references are to the Penal Code unless otherwise stated.

[2] The details of defendant's criminal conduct are not relevant to the limited issue he raises in this appeal, and we will not recount them here.

On April 7, 2010, Judge James T. Warren sentenced defendant to the stipulated term of seven years in state prison with credit for time served. Judge Warren also referred the matter to the probation department to determine if any restitution was owed.

Defendant contends the trial court violated section 1203, subdivision (g) by failing to refer the matter to the probation department for a presentence review and report, thereby preventing him from establishing an adequate record. He also argues that he received ineffective assistance of counsel and that the failure to refer the matter to the probation department would have allowed him to "articulate the ineffective counsel claim (on his own or with the assistance of the probation officer)." Curiously, without citation to any authority, defendant further states, "In the instant case the trial court must have been aware of some basis for [his] claim of ineffective counsel, because the court did issue the certificate of probable cause."[3] He therefore requests that the judgment be reversed and the matter remanded with directions to the trial court "to create a record sufficient to review the ineffective counsel claim."

We note initially that defendant's claims are essentially "'perfunctorily asserted without argument in support' . . . ." (*People v. Williams* (1997) 16 Cal.4th 153, 206.) We need not consider mere contentions of error unaccompanied by legal argument, since they have not been properly raised. (*Ibid.*; *People v. Earp* (1999) 20 Cal.4th 826, 884.)

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[3] We note defendant's request for a certificate of probable cause claimed that he had received ineffective assistance of counsel. The certificate of probable cause was granted by Judge Warren.

"'[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration. [Citations.]' [Citations.]" (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) Here, defendant fails to make legal arguments or to cite to any pertinent authority in support of his claims.

In any event, defendant's contentions lack merit. Section 1203, subdivision (g) states in pertinent part that, as to a defendant ineligible for probation, "[t]he judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings."

Defendant has failed to show the trial court abused its discretion in failing to order a probation report (*People v. Bullock* (1994) 26 Cal.App.4th 985, 990) or that any prejudice resulted (*People v. Begnaud* (1991) 235 Cal.App.3d 1548, 1556, fn. 7). "A probation report is advisory only." (*People v. Llamas* (1998) 67 Cal.App.4th 35, 40.) Moreover, presentence investigation reports are for use by "judges in determining the appropriate length of a prison sentence and by the Department of Corrections and Rehabilitation, Division of Adult Operations in deciding on the type of facility and program in which to place a defendant, and are also used in deciding whether probation is appropriate." (Cal. Rules of Court, rule 4.411(d).) Here, however, defendant pled guilty to an *agreed-upon* sentence. Therefore, there was no need for a presentence report.

Nothing would have been added to persuade the sentencing court to impose a more lenient sentence. Defendant was charged with robbery (§ 211) with the personal use of a knife (§§ 12022, subd. (b)(1)) and petty theft with a prior theft conviction (§§ 490.5 & 666). He was also charged with *12* prior prison terms (§ 667.5, subd. (b)).

Because defendant has not demonstrated he was prejudiced by the absence of a probation report, he has failed to substantiate his claim of ineffective assistance of counsel by showing "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (*Strickland v. Washington* (1984) 466 U.S. 668, 694 [104 S.Ct. 2052, 80 L.Ed.2d 674].) The sentencing court did not err in sentencing defendant without obtaining a probation report because one was not needed. In addition, we fail to see how a probation report would have allowed defendant to "articulate the ineffective counsel claim (on his own or with the assistance of the probation officer)."

II

DISPOSITION

The judgment is affirmed.

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RICHLI
Acting P.J.

We concur:

KING
J.

MILLER
J.